



Board of Adjustment



Agenda Numbers: 15 & 16

Case Numbers: BA-50064/ZA-50096

BA-50065/ZA-50084

Hearing Date:

October 5, 2005

Appellant: John A. & Joann Carrillo
2404 Franzen Rd. SW
Albuquerque, NM 87105

Agent: Garcia/Kraemer & Associates
200 Lomas NW, Suite 1111
Albuquerque, NM 87102

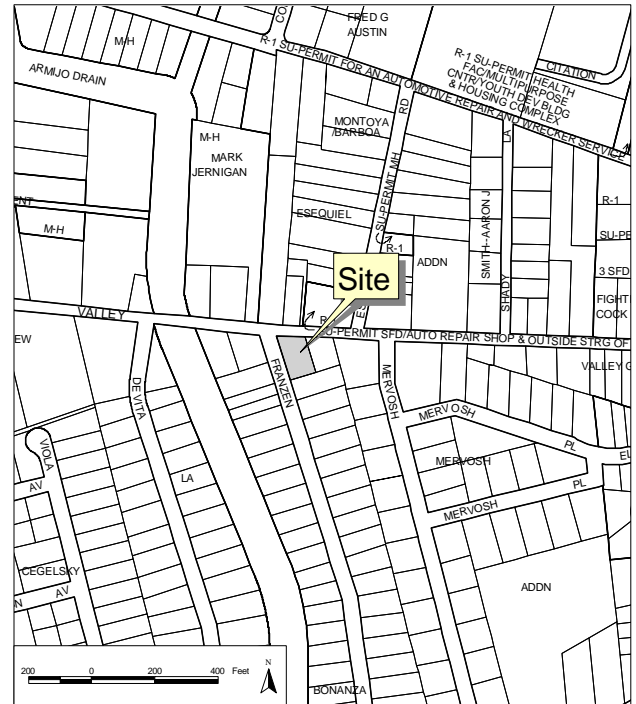
Applicant: John A. & Joann Carrillo
2404 Franzen Rd. SW
Albuquerque, NM 87105

Agent: Garcia/Kraemer & Associates
200 Lomas NW, Suite 1111
Albuquerque, NM 87102

Site Location: 2404 Franzen Rd. SW

Zone Designation: R-1 Single-Family Residential

Recommendation: Denial



Summary: These requests are two appeals of the Zoning Administrator's denial of a variance of 10.1 feet to the required rear yard setback distance, as well as a variance of 258 square feet to the square footage limitation for a building nonconforming as to yard requirements. The appellant seeks approval to allow the continued use of an unpermitted carport which connects an existing single-family dwelling to a former detached garage.

These matters were previously denied by the Extraterritorial Land Use Commission (ELUC) on September 4, 2002 (BA-20015/ZA-20087 & BA-20016/ZA-20098). Appeals were not filed after the ELUC's determinations, but nevertheless, the proposed project was completed without the permits and approvals necessary for construction.

Staff Contact: Brennon Williams, Zoning Administrator

- Attachments:**
1. Appeal applications
 2. Notices of Decision (July 19, 2005)
 3. Original applications with provided site plan
 4. Material presented in support of the variances (July 12, 2005)
 5. Previous Notices of Decisions - BA-20015/ZA-20087 & BA-20016/ZA-20098 (September 5, 2002)
 6. Notice of Violation (February 28, 2005)
 7. Agency comments for most recent ZA applications
 8. Aerial photograph, vicinity map & zone atlas page

BA-50064/ZA-50096

Garcia/Kraemer & Associates, agent for John A. & Joann Carrillo, appeals the Zoning Administrator's decision in denying a variance of 258 square feet to the square footage limitation for a building nonconforming as to setback on Lot 2, Block 1, Bonanza Subdivision, located at 2404 Franzen Rd. SW, zoned R-1, and containing approximately .265 acres. (N-12) (Original request submitted by John A. & Joann Carrillo)

BA-50065/ZA-50084

Garcia/Kraemer & Associates, agent for John A. & Joann Carrillo, appeals the Zoning Administrator's decision in denying a variance of 10.1 feet to the required rear yard setback distance on Lot 2, Block 1, Bonanza Subdivision, located at 2404 Franzen Rd. SW, zoned R-1, and containing approximately .265 acres. (N-12) (Original request submitted by John A. & Joann Carrillo)

BACKGROUND

The Requests

The appellant is requesting authorization of two variances; one for 258 square feet to the square footage limitation for a building nonconforming as to setback (BA-50064/ZA-50096), and the other for 10.1 feet to the required rear yard setback distance (BA-50065/ZA-50084). Central to both requests is an existing carport, which was constructed without approval and applicable permits, after two previous appeals were denied by the Extraterritorial Land Use Commission in September 2002 (Attachment 4).

The result of the subsequent unpermitted construction caused the carport, which attached the existing dwelling unit to a detached garage in the rear yard of the property, to be subject to current regulations for setback and size limitations. The "connection" of these structures by the carport essentially resulted in two detached buildings which were correctly placed on the property according to applicable standards, and created a single structure subject to different requirements. Because of this, more stringent setback distances for the "new" building from corresponding property lines went into effect, as well as a limitation on how large the connecting carport could be.

The Property

The site is located at the southeast corner of Franzen Road and Valley Road, addressed as 2404 Franzen Rd. SW, zoned R-1, and is approximately .265 acres in area. The property is currently developed with a single-family dwelling unit, with the connecting carport and garage. Additionally, an accessory building is located in the rear yard of the property.

The Hearing

These proposals were heard at the Zoning Administration hearing held on July 12, 2005. William Kraemer, of Garcia/Kraemer & Associates, acted as agent for the property owner and presented the requests. Mr. Kraemer testified that the owner, John Carrillo, went forward with construction of the carport despite being denied approval due to confusion with the permitting process. He indicated that Mr. Carrillo purchased the property in 1987, and since that time has worked diligently to improve the site. He stated that the construction of the carport appeared to meet or exceed applicable building standards, and provided a petition of support from area residents convinced that the structure added "value and improved appearance" to properties in the neighborhood.

Mr. Kraemer also outlined efforts undertaken by Mr. Carrillo to minimize the effects of the carport while attempting to maintain the intent of the regulations. These included the design of the carport to merely continue the façade of the existing garage along Franzen Road rather than encroach further into the side yard area, as well as previous attempts by Mr. Carrillo to purchase the property to the south of the subject site in an effort to provide additional area to the south of the garage.

Mr. Kraemer stated that an allowance for the carport and its current design would not create the placement of a structure closer to a corresponding property line, and as such, should be viewed as being consistent with the intent of the regulations. He reasoned that due to the size and shape of the property combined with the design of the carport, the lot continued to allow sufficient area for aesthetic purposes (light and air) to be maintained on the site. This helped to reduce the likelihood of the property being “fully constructed”, which may result in a sense of overcrowding or concentrated density. Additionally, it was argued that because the existing development was setback a considerable distance from the street, there was a perceived ability of the property to maintain its large areas of open space and setbacks, especially when compared to that of other lots in the neighborhood.

Mr. Kraemer also mentioned that all other aspects of the property met applicable Bernalillo County standards, including connection to water and sewer services, and that if the requests were approved, any necessary modifications to the carport would be made to meet building code requirements. Mr. Carrillo briefly added that he felt the neighborhood had been improved because of the construction, that none of his neighbors had expressed complaints about the carport, and that he was “asking for forgiveness” concerning the unpermitted development on the site.

The Decision

The Zoning Administrator denied the requests based on findings that the applicant failed to meet his burden of proof for authorization. Of the arguments raised, none addressed the exceptional, peculiar and unusual aspects of the property which prohibited the owner's reasonable use of the land or rendered the site unique as compared to other properties in the immediate vicinity. The sole rationalization for the variance requests seemed to be based on the property owner's reaction to the self-created hardship brought on by the unpermitted construction.

APPLICABLE REGULATIONS

Comprehensive Zoning Ordinance of Bernalillo County.

Section 9. R-1 Single-Family Residential Zone.

- A. The regulations set forth in this section or set forth elsewhere in this ordinance, when referred to in this section, are the regulations in the R-1 Residential Zone. The purpose of this zone is to provide for the development of single-family homes on lots not less than three-quarters [of an] acre in area, except that where community water and sewer facilities are made available, the lot size may be reduced consistent with development densities in the Albuquerque/Bernalillo County Comprehensive Plan. The regulations provide for the health, safety and welfare of the residents.
- B. Use Regulations. A building or premises shall be used only for the following purposes, all uses customarily incidental to the building or premises shall be maintained on site:

1. Prohibited Uses. The following uses are prohibited in this zone:
 - a. The open storage of inoperative vehicles or auto parts;
 - b. The open storage of trash or junk;
 - c. The open storage of large appliances;
 - d. Any use not designated a permissive use or conditional use in this zone, unless otherwise authorized by this Code; or
 - e. Any use not recognized as customarily incidental to a permitted use in this zone.
2. Permissive Uses:
 - a. Agricultural activity, including truck gardening and nurseries, fur bearing animal farm, the raising of poultry or rabbits, dairy farming, livestock grazing, feeding, and the raising of livestock on lots containing three acres or more. On lots of less than three acres, there shall be at least 10,000 square feet of lot area for each cow or horse, and/or at least 4,000 square feet of lot area for each sheep, pig, or goat, provided that any building, pen, or corral where such animal is located is at least 20 feet from any existing dwelling unit. Stands for the display or sale of home-raised agricultural products, including poultry or rabbits raised on the premises.
 - b. One single-family dwelling or H.U.D. Zone Code II manufactured home per lot.
 - c. Accessory building, structure, or use customarily incidental to the above uses, such building or structure shall be limited to an area of 600 square feet or less.
 - d. Noncommercial library, museum, and art gallery.
 - e. Recreational vehicle or boat storage in the rear yard when such recreational vehicle or boat is not to be used as accessory living quarters, and is not connected to utilities, other than temporarily to a source of electricity. Recreational vehicle used for dwelling purposes served only by electricity for lighting purposes, the use of such recreational vehicle shall be limited to a maximum of two weeks in any calendar year.
 1. In the event where rear yard access is not available, outside parking in the front yard is allowed, provided:
 - (a) The body of the recreational vehicle or boat is at least 11 feet from the front property line.
 - (b) No part of the unit extends onto the public right-of-way.
 - (c) A corner lot is always deemed to have reasonable access to the rear yard; a fence or wall is not necessarily deemed to prevent reasonable access.
 - f. Signs not exceeding eight square feet in area pertaining to the lease, hire, or sale of a premises or sale of home-raised products, provided there shall be no more than one such sign on each lot and provided further that, if illuminated, the source of such illumination shall be nonoscillating and nonflashing.
 - g. Parking incidental to uses permitted in this zone, provided all vehicles which are not parked inside a building are operative and are not wholly or partially dismantled.
 - h. Home occupation.
 - i. Concealed Wireless Telecommunications Facility, provided that it satisfies the requirements of section 22.5 of this ordinance.
 - j. Wireless Telecommunications Antenna located on a public utility structure, provided that it satisfies the requirements of section 22.5 of this ordinance.
 - k. Amateur Radio Antenna/Tower up to 65 feet as measured from grade.
3. Conditional Uses. The following uses may be permitted if approved by the Zoning Administrator in accordance with the procedures and under the conditions set out in the administrative Section of this ordinance with additional requirements deemed necessary

to safeguard the best interest of the adjoining property, neighborhood and the community.

- a. Accessory building or structure in excess of 600 square feet in area and incidental to the uses listed under Section 7.B.1. and 7.B.2.
- b. Amateur Radio Antenna/Tower 65 to 100 feet as measured from grade.
- c. Church and incidental facilities.
- d. School.
- e. Day Care Center.
- f. Family Day Care Home.
- g. Temporary festivals, circuses, carnivals or activities in a tent, provided that the use or activity meets the following requirements:
 - (1) The minimum lot size per use or activity shall be five acres.
 - (2) All required parking shall be located on the same site with the activity or use.
 - (3) The use or activity shall be at least two miles from the nearest conforming residential use.
 - (4) Prior approval of the proposed use or activity must be obtained from the County Sheriff, County Fire Department, County Environmental Health, County Public Works, City of Albuquerque Air Pollution Control, and Albuquerque Metropolitan Arroyo Flood Control Authority or their authorized representative.
 - (5) The hours of operation, shall be between 6:00 a.m. and 8:00 p.m. This includes the time of erection and dismantling.
 - (6) The use or activity shall be limited to three days in one calendar year.
 - (7) No permanent structures shall be erected.
 - (8) Temporary fencing may be erected, and shall be removed within 24 hours after the activity.
- h. Real estate sales office and real estate signs exceeding the limitations in Subsection 8.B.(1).f. above in connection with a specific development for a period of not more than two years.
- i. Recreational facility (nonprofit) such as swimming pools or tennis clubs on sites containing not less than one acre.
- j. Temporary storage building or yard for equipment, material or activity incidental to a specific construction project but not to exceed one year, unless the time is extended by the Zoning Administrator.
- k. Mobile home used as a dwelling (with connections to any utilities) during construction of a dwelling on the same premises, provided such use shall be limited to a maximum period of 24 months.
- l. One mobile home for a three-year period in addition to an existing single-family dwelling or mobile home on a lot provided it complies with the following requirements:
 - (1) The mobile home may be used only by members of the immediate family for the purpose of providing assistance to those members of the family who are elderly, ill, mentally or physically disabled as attested by a licensed physician.
 - (2) The mobile home shall be connected to water and sewage disposal facilities approved by the Department of Environmental Health.
 - (3) The mobile home must be placed on the property in conformance with the setback requirements and located at least 15 feet from any structures on the same or on adjoining property.
 - (4) Placement of a mobile home on the property will not seriously conflict with the character of the area or be detrimental to the values of surrounding properties.
- m. Nonprofit animal facility.
- n. Park.

- C. Height Regulations. Buildings and structures shall not exceed 26 feet or 2 1/2 stories in height, except as provided in The Supplementary Height and Area Regulations Section of this ordinance.
- D. Area Regulations:
1. Minimum Lot Area and Lot Width. Every lot shall have a minimum area of not less than three-quarters [of an] acre and a minimum lot width of 60 feet, except that where community water and sewer facilities are available, the lot area may be decreased to 8,000 square feet if located in the Developing, Established or Central Urban Areas, or 14,520 square feet if located in the Semi-Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan.
 2. Front Yard.
 - a. There shall be a front yard having a depth of not less than 20 feet except as provided in the Supplementary Height and Area Regulations Section of this ordinance.
 - b. Where lots have double frontage, the required front yard shall be provided on both streets.
 3. Side Yard:
 - a. Except as hereinafter provided in the following paragraph and in the Supplementary Height and Area Regulations Section of this ordinance, there shall be a side yard on both sides of a building the aggregate width of which shall be not less than 14 feet, provided, however, that neither such yard shall be less than six feet in width.
 - b. Wherever a lot of record, at the effective date of this ordinance, has a width of less than 60 feet, each side yard may be reduced to a width of not less than ten percent of the width of the lot, but in no instance shall it be less than three feet.
 4. Rear Yard. Except as hereinafter provided in the Supplementary Height and Area Regulations Section of this ordinance, there shall be a rear yard having a depth of not less than 15 feet.
- E. Parking Requirements. Off-street parking for all uses must be provided in accordance with the regulations set forth in the Off-street Parking, Loading and Unloading Regulations Section of this ordinance.

Section 23.A. Nonconforming Uses. Nonconforming Building or Structure.

5. Any building or structure nonconforming only as to yard requirements shall not be added to or enlarged except in compliance with the following requirements:
 - a. Any such addition or enlargement shall conform to all the regulations of the zone in which the building or structure is located.
 - b. The total aggregate floor area included within all such separate additions or enlargements shall not exceed 50 percent of the floor area of the original nonconforming building or structure.





















Agency Comments

Comments received for ZA-50084 from the Bernalillo County Building Department state that a building permit will be required for the existing carport project if the requests are approved.

ADDITIONAL INFORMATION SUBMITTED

The agent provides a written justification for the appeals which mirrors that presentation made at the ZA hearing. Specifically, the agent outlines the age of the property, the reported improvements, and the admission of the owner concerning the previous construction without permits. The synopsis also questions the reason for the required variances, and lists reasons that the property should be deemed exceptional, peculiar and unusual in order to meet the necessary criteria.

ANALYSIS SUMMARY

ORDINANCE CRITERIA	PROVIDED/REPORTED INFORMATION	STAFF ANALYSIS
Property possesses exceptional, peculiar, and unusual circumstances?	<ul style="list-style-type: none">  .265 acres in area  Corner property; rectangular in overall shape  Existing development includes a single-family dwelling, garage & accessory building <ul style="list-style-type: none">  Unpermitted carport attached to house & garage  House reportedly constructed prior to 1973 	<ul style="list-style-type: none">  Based on review of corresponding Zone Atlas page, lot is similar in size & shape to other properties in the area  No existing documentation concerning age of development on site <ul style="list-style-type: none">  Possible nonconformance with respect to current yard & lot size requirements
"Unique circumstances" are not found within the locality and neighborhood concerned?	<ul style="list-style-type: none">  Property is a corner lot; "amounts to 2 front yards"  Vacant property to the south of the subject site  Lot is larger than required minimum lot size; existing property is 11,543 sq. ft. in area  Extra area between subject lot & street improvements  Property provides adequate area for light & air  Site developed prior to '73; proposals do not result in structures increasing encroachment into required yards 	<ul style="list-style-type: none">  "Front yard" is a defined term in the ordinance; this property has a front yard along Valley Road & a side yard along Franzen Road  Vacant/undeveloped parcel to the south of the subject site unrelated to variance requests; other properties also adjacent to this lot; suggests commonality rather than an exceptional aspect  Lot appears to be nonconforming as to lot size; property located in Semi-Urban area, 14,520 sq. ft. required  Perceived "extra area", provisions for "light & air", and possible nonconformance are unrelated to the criteria for approval
Granting of the requested variance will permit the owner reasonable use of their land?	<ul style="list-style-type: none">  Variance requests are "technical and overly complicated" 	<ul style="list-style-type: none">  Arguments concerning the complexity of the ordinance are unrelated to the criteria for approval

ANALYSIS SUMMARY (cont.)

Granting of the requested variance will permit the owner reasonable use of their land? (cont.)	<ul style="list-style-type: none"> ■ Neighborhood support for the proposals ■ Carport "is a valuable addition to the property and the neighborhood" ■ Approval of requests will not have an adverse effect on the neighborhood or conflict with character of the area 	<ul style="list-style-type: none"> ■ Neighborhood support (or opposition) bears no weight on variance requests ■ Value, whether perceived or due to financial investment, is not considered an argument for the authorization of a variance ■ Existing regulations (Sec. 23) currently allow for the expansion of a property nonconforming as to setback ■ Effect of request on neighborhood and character of area specific to conditional use requests
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CONCLUSION

The Zoning Ordinance authorizes the granting of variance requests in those instances where a property owner is able to demonstrate that there are unique circumstances in connection with the property. These circumstances should affect only the subject site and should not be a condition found in the general area or common throughout the neighborhood. Further, if a variance is authorized, it is to be to the extent necessary to permit an owner reasonable use of their land.

Staff's recommendation for these requests is identical to when these matters were presented to the Board in 2002 – the owner has failed to meet the criteria necessary for approval. As was previously determined, the property still does not possess any unique circumstances in connection with the land which would result in authorization of a variance for the rear yard setback or the nonconforming building addition limit. Without variance approvals, building permits for the project could not be obtained, and as such, all work on the existing carport was the result of flagrant violations of both construction and land-use standards. These established laws, rules, and requirements help to ensure safe, orderly development for all residents in Bernalillo County. The lack of a permit is now to be excused by the owner's current willingness to allow for the County to inspect the unpermitted carport, prefaced with statements of confidence that the construction will meet or exceed structural requirements.

Many of the arguments now presented for the appeal seem to fall short of sufficient justification. Factors such as the age of the site, the designation of the lot as a corner property, the noted "extra area" between the street and the structures on the lot, and the perceived technicality of the variance standards are too universal in nature to have bearing on this specific lot. For the vast majority of properties in the County (including all corner lots), the age, the setbacks, and the specialized standards are rudimentary features of the lot. The granting of a variance is not an appropriate remedy for such a general condition.

Some of the listed justification also seems unrelated to the proposal, including reference to the undeveloped property to the south of the subject site, substantial neighborhood support, and the construction of the house prior to zoning standards. Again, staff questions the applicability of these arguments. There seems to be no clear connection between the existence of the vacant lot and a requested reduction in the required setback standard and expansion of the building-size limitations. These regulations have been established to allow for the continued health, safety, and welfare of all residents, and purposefully prohibit a “first-come-first-served” theory of development to allow for some degree of predictability for future improvements on adjacent properties. Support or lack of opposition from neighboring residents also is independent of the standards for approval, as variances are not decided on the type of neighbors the appellant has, but rather on the equities involved.

Some of the reasons listed for approval also seem mistaken. The written appeal information indicates that the lot exceeds the minimum lot area, when in fact, the property is just under 3,000 square feet smaller than the third-acre requirement. Reference is made to the “technical and overly complicated” reasons for the variances, and again infers neighborhood support of the carport described as a “valuable addition to the property” that “will not have an adverse effect on the neighborhood or conflict with the character of the area.” Again, these arguments are based on subjective opinion of the property and do not address the criteria for approval as outlined in the ordinance.

Staff continues to stand behind the previous determination by the ELUC when these matters were denied in the past. Section 24.B. of the Zoning Ordinance does authorize the Board to hear and determine appeals from the decisions of the Zoning Administrator in denying applications for variance requests. But based on the information provided for the appeals and appellant’s lack of justification based on the specified criteria, staff submits the matters to the Board with the following recommendation:

RECOMMENDATION

Denial of BA-50064/ZA-50096 and BA-50065/ZA-50084, thereby upholding the decision of the Zoning Administrator.

Brennon Williams
Zoning Administrator